

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 14 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0086-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
RICHARD STEVE MENDIVIL,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR99000312

Honorable Wallace R. Hoggatt, Judge

REVIEW GRANTED; RELIEF DENIED

Richard Mendivil

Buckeye
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 Pursuant to a plea agreement entered in 2000, petitioner Richard Mendivil was convicted of two counts of attempting to molest his five-year-old daughter in 1989. The trial court sentenced him to a mitigated, 8.5-year sentence on one count and suspended the imposition of sentence and placed him on five years' probation on the other count, to commence after Mendivil completed his prison sentence. We granted review but denied relief on two petitions for review Mendivil filed from the court's denial of his petitions for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. *See State v. Mendivil*, Nos. 2 CA-CR 2003-0139-PR (decision order filed July 30, 2004), 2 CA-CR 2004-0283-PR (decision order filed Apr. 8, 2005).

¶2 In February 2008, the state filed a petition to revoke probation, alleging Mendivil had violated various conditions of his probation, which he had begun serving in January 2008 upon his release from prison. In July, Mendivil admitted to having violated one of the conditions, and the trial court revoked his probation and sentenced him to a slightly mitigated, 8.5-year term of imprisonment.

¶3 In September 2008, after his probation had been revoked, Mendivil filed a pro se notice of post-conviction relief, and the trial court appointed counsel to represent him. After appointed counsel filed a notice advising the court she had reviewed the record and could "find no colorable claims pursuant to Rule 32," the court granted Mendivil an extension to prepare a pro se petition. When he failed to do so by the assigned deadline, the court dismissed the notice in May 2009. Mendivil then filed a second notice in June 2010, which the court dismissed in February 2011, followed by a third notice and petition in March 2011, which the court dismissed in July 2011, and a

fourth notice and petition in January 2012, the dismissal of which is now before us on review.¹ Absent a clear abuse of discretion, we will not disturb a trial court's ruling on post-conviction relief. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶4 In his pro se petition for review, Mendivil argues, as he did in his petition below, that his claims are not precluded, post-conviction counsel was ineffective, and alleged discrepancies between his recorded interviews with police and the transcripts of those interviews would prove his innocence. He also argues the trial court erred in failing to conduct an evidentiary hearing before denying his petition below.

¶5 In a thorough, well-reasoned minute entry order, the trial court identified all of the claims Mendivil had raised and resolved them correctly and in a manner permitting this court to review and determine the propriety of that order. *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The court correctly concluded the claims raised either were precluded or without merit. *See* Ariz. R. Crim. P. 32.6(c). No purpose would be served by reiterating the court's ruling in its entirety. *See Whipple*, 177 Ariz. at 274, 866 P.2d at 1360. Rather, with the exception of the final paragraph of the court's ruling, which does not relate to the issues before us on review, we adopt the court's ruling.²

¹Mendivil filed yet a fifth petition in February 2012, the dismissal of which is not before us on review.

²We further note that, although the trial court stated in its February 2012 ruling denying the underlying petition that the subsequent petition Mendivil filed in February 2012 was "not yet at issue," it subsequently denied that petition in April 2012.

¶6 Because Mendivil has not sustained his burden on review of establishing the trial court abused its discretion in denying the petition for post-conviction relief, we grant the petition for review, but deny relief.

/s/ *Peter J. Eckerstrom*
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ *Joseph W. Howard*
JOSEPH W. HOWARD, Chief Judge

/s/ *J. William Brammer, Jr.*
J. WILLIAM BRAMMER, JR., Judge